IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3032 of 2002
with
CRIMINAL MISC.APPLICATION No 3033 of 2002
with
CRIMINAL MISC.APPLICATION No 3034 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 NO

N R DESAI GENERAL MANGER (PROJECT)

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3032 to 3034 of 2002

MR RD DAVE for Petitioner No. 1

MR SUDDANSHU S PATEL APP for Respondent No. 1

MR HEMANT S SHAH for Respondent No. 2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 09/10/2002

ORAL JUDGEMENT

1. These petitions under Section 482 of the Code of Criminal Procedure Code, 1973 ('the Cr.P.C.' for short) are filed by one of the accused persons in Criminal Cases Nos.2611 of 1995, 2612 of 1995 and 2495 of 1995 pending in the Court of the learned Metropolitan Magistrate at Ahmedabad. The complaints in the original criminal cases are filed by the Insurance Inspector of the Employees State Insurance Corporation (ESIC) alleging the offences under Section 85 (e) and (g) read with Sections 43 and 44 of the Employees State insurance Act ('the ESI Act' for short) and Regulations 26 of ESI (General) Regulations, 1950. The other accused persons are the company and its other directors, whereas the petitioner happens to be a director nominated by the Gujarat Industrial Investment Corporation Limited, which is a "Financial Corporation" within the meaning and definition of the State Financial Corporation Act, 1951. The proceedings are sought to be quashed on the grounds that, in the cases of offences by companies, under the provisions of Section 86-A of the ESI Act, a person who was in charge of and was responsible to the company for the conduct of its business could be indicted and a director could be punished if the offence was committed with the consent, connivance or negligence on the part of the director. It was submitted that no such ingredients were found to have been alleged in the complaint against the petitioner. Under the express provisions of Section 86-A of the ESI Act, a director is defined to be a managing director or a whole-time director, whereas in the present case, the petitioner was admittedly not a whole-time director or a managing director.

2. It was further submitted by learned counsel Mr.R.D.Dave for the petitioner that, by virtue of the provisions of Section 27 (3) (b) of the State Financial Corporation Act, 1951, any director appointed in pursuance of that provision, shall not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto. It is further provided in Section 41-A thereof that: "No suit, prosecution or other legal proceeding shall lie against any person appointed as director, administrator, managing agent or manager by the Financial Corporation in pursuance of Section 27 or Section 32-A for anything which is in good faith done or intended to be done by him as such

director, administrator, managing agent or manager". On this basis, it was submitted that the petitioner herein was statutorily granted immunity from prosecution and the proceedings were liable to be terminated against him, particularly when the other accused persons in the original complaint were already convicted.

3. Learned counsel Mr.Hemant Shah, appearing for the original complainant, fairly conceded to the legal position that the purpose of prosecution for the violation of the provisions of the ESI Act was already served in the sense that the other accused persons were tried and convicted. It was also apparent that the State Financial Corporation Act, 1951 being a later legislation, the provisions thereof must be given effect to.

4. In these facts and circumstances, carrying on the trial against the petitioner cannot serve any purpose and the proceedings against him are required to be quashed

and terminated. Accordingly, the petitions are allowed and the original Criminal Cases Nos.2611 of 1995, 2612 of 1995 and 2495 of 1995 are ordered to be quashed and terminated qua the petitioner. Rule made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)